

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter

of

Index No.

08-01789

THE SIPA LINK,

Debtors.

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April 7, 2009

United States Custom House

One Bowling Green

New York, New York 10004

Motion to approve bidding procedures on Short
Notice

B E F O R E:

HON. BURTON R. LIFLAND,

U.S. Bankruptcy Judge

A P P E A R A N C E S:

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Counsel to the Trustee

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New York, New York 10017

BY: MARC E. HIRSCHFIELD, ESQ.

-and-

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BY: DOUGLAS R. GOODING, ESQ.

1 PROCEEDINGS

2 THE COURT: The Sipa Link. Good morning
3 everyone.

4 MR. HIRSCHFIELD: Good morning, Your
5 Honor. My name is Marc Hirschfield, and I am an attorney
6 with the law firm of Baker Hostetler. With me today is my
7 colleague, Amy Vanderwal. We are the counsel for the
8 trustee.

9 We are here this morning, Your Honor, on
10 the trustee's motion to establish the bid and auction
11 procedures for the sale of the Debtors' market-making
12 business.

13 As we set forth in our motion, upon his
14 appointment the trustee began his efforts to sell the
15 marketplace operations, and in that regard he retained the
16 Lazard firm to assist in the marketing. Lazard contacted
17 over 100 potentially interested parties, and of those
18 contacted about half, 46 to be exact, submitted, and signed
19 confidentiality agreements.

20 In terms of the people who were contacted,
21 they include entities in the market-making business,
22 private equity firms, hedge firms and other strategic
23 buyers. You have 46 parties who conducted due diligence
24 and have expressions of interest and we negotiated with
25 them and that led to the agreement with, and they are in

1 the courtroom today, Castor Pollus Securities, LLC, and
2 they agreed to serve as the stalking horse bidder.
3 Pursuant to a stalking horse bidding they will pay to the
4 Trustee \$500,000 to close, and then over the course of
5 several years the earn-outs of up to \$15 million.

6 Since we filed the motion, a number of
7 entities, some of whom were previously contacted, a number
8 of new people came forward expressing interest in these
9 assets. We hope to have a vibrant auction when that
10 happens in a couple of weeks. We are here this morning to
11 establish the bidding procedures, set forth more fully in
12 the motion.

13 In summary what we propose is the
14 following: Any party who wishes to make a bid for those
15 assets, we would propose that they do so by April 22 and we
16 propose the bidders provide us with a cash deposit equal to
17 10 percent of the closing payment. And, in addition, they
18 provide us by that date with a market version of the
19 purchase agreement.

20 If any bids are received, we propose to
21 have an auction on April 27, which is a Monday, and we will
22 have this to chambers on the 28th for the sale hearing.

23 At the auction we propose that the bidding
24 increments be in \$35,000 increments, and the first bid of
25 any competing bidder will have to be at least \$550,000 plus

1 consideration, present value of which equals the Castor
2 Pollux bid, so that's \$50,000 in the cash portion.

3 In connection with the sale we agreed to
4 pay Castor Pollux a breakup fee of \$15,000 in the event
5 another bidder comes in and wins the assets.

6 The \$15,000 is 3 percent of the closing
7 date payments by Castor Pollux, and we submit that amount
8 is reasonable and in line with what has been granted in
9 other contacts.

10 I know technically in the breakup fee we
11 didn't give any value to the earn-out payments, just the
12 cash-out portion we gave credit to in terms of figuring out
13 what the breakup fee ought to be. In connection with the
14 fee we seek to implement procedures for the assumption and
15 assignment of the executory contracts. A number of
16 contracts are identified in the purchase agreement we
17 assume and assign to Castor Pollux or whoever the winning
18 bidder is. We will do the calculations and we propose to
19 give notice to each of the counterparties and to let them
20 know that the contracts will be assumed and assigned, and
21 we believe the cure damages are zero.

22 We propose that the deadline of April 22,
23 which is the same date as the bids are due, it be the
24 deadline for the parties to object to the cure amounts or
25 to the assumption and assignments of contracts.

1 We believe that those procedures in total
2 are reasonable and are aimed to provide the trustee with
3 the highest and best bid for these assets and we
4 respectfully request the Court to enter an order approving
5 them.

6 We served the motion in accordance with
7 Your Honor's order from the last order from last week on
8 the noticing procedures, the deadline to file objections
9 was last Friday. No objection were filed by then or since
10 then. So, therefore, we would respectfully request that
11 the Court grant this portion of the motion.

12 THE COURT: Does anyone else want to be
13 heard? Is there going to be any discussion or indication
14 as to what might be the highest or the best in connection
15 with the competing bid, i.e., earn-out period, the total
16 amount?

17 MR. HIRSCHFIELD: We discussed that with
18 Castor Pollux.

19 THE COURT: And what is the earn-out? Is
20 it a percentage of the business?

21 MR. HIRSCHFIELD: Yes. There are two
22 different earn-outs, one is based upon total sales and that
23 is a \$3 million figure. The rest is based upon EBITA and
24 its calculations in the agreement as to how that works.
25 But to answer your first question, obviously, cash is king

1 and we prefer to get the most we can on the closing date.

2 In terms of the earn-out, we would consider
3 both the likelihood of the earn-out being paid; the
4 financial wherewithal of the people who we are dealing
5 with; the speed at which it will get paid and the way it is
6 calculated. So we reserve the right to work with Lazard
7 and others to figure out the present value of each of those
8 payments and we will give as much credit as we believe is
9 just.

10 THE COURT: Thank you. Does anyone else
11 want to be heard?

12 Having no response, the application is
13 granted.

14 MR. HIRSCHFIELD: Thank you, Your Honor.
15 May I approach with an order?

16 THE COURT: Yes. I have approved the
17 order.

18 MR. HIRSCHFIELD: Thank you, Your Honor.

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C E R T I F I C A T E

STATE OF NEW YORK }
 } ss.:
COUNTY OF NEW YORK }

I, MINDY CORCORAN, a Shorthand Reporter
and Notary Public within and for the State of New York, do
hereby certify:

That I reported the proceedings in the
within entitled matter, and that the within transcript is a
true record of such proceedings.

I further certify that I am not related, by
blood or marriage, to any of the parties in this matter and
that I am in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 7th day of April, 2009.

MINDY CORCORAN